IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Brijlal & Ors. v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1279/1999
under Article 226 of the Constitution of India.

Date of Order : 15th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Bishnoi, for the petitioners.
Mr. B.L.Tiwari, Addl.Govt.Advocate.

BY THE COURT :

By this petition for writ a challenge is given to the judgment dated 17.3.1999 passed by Board of Revenue Rajasthan, Ajmer holding the petitioners having 33.10 bighas excess land with them on the appointed date and ordered to acquire the land in excess.

The facts giving rise to present writ petition are that Sub Divisional Officer, Nagaur by an order dated 14.1.1972 while deciding proceedings under Old Ceiling Law held that no land was available with assessee Paburam in excess to the ceiling limits prescribed.

The proceedings to determine land beyond ceiling limits were reopened under Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973 (hereinafter referred to as "the Act of 1973"). In these proceedings the Additional Collector, Nagaur by judgment dated 26.9.1984 declared 44 bighas and 10 biswas land in excess with assessee and ordered for its acquisition. An appeal giving challenge to the order dated 26.9.1984 was preferred before the Board of Revenue Rajasthan, Ajmer which was accepted in part by holding that the assessee was having 33.10 bighas of land in excess and not 44.10 bighas as held by Additional Collector.

The present petitioners by way of filing a writ petition (SBCivil Writ Petition No.2155/89, Brijlal & Ors. Vs. State & Ors.) gave challenge to the order passed by the Board of Revenue before this Court. This Court by judgment dated 8.1.1997 accepted the writ petition preferred by the petitioners holding therein that in view of declaration made by Shri Paburam, father of the petitioners, on 13.1.1971 the Board of Revenue ought to have considered the petitioners as major on the date appointed. The Court while accepting the writ petition directed the Board of Revenue to decide the appeal preferred under Section 23(a) of the Act of 1973 afresh considering the case of Brijlal and Phoosaram as major sons of Paburam.

In view of directions give by this Court vide judgment dated 8.1.1997, the Board of Revenue decided the appeal afresh by judgment impugned dated 17.3.1999. The Board of Revenue by judgment impugned while rejecting the appeal gave specific finding that no evidence was produced to prove prima facie that the land with regard to which declaration was filed on 13.1.1971 was ancestral and Brijlal and Phoosaram were major on the date appointed. Being aggrieved by judgment dated 17.3.1999 present writ petition is preferred by the petitioners.

The contention of counsel for the petitioners is that the Board of Revenue erred while giving a finding that petitioners Phoosaram and Brijlal were not major on the date appointed. It is pointed out by the counsel for the petitioners that this Court by judgment dated 8.1.1997 directed the Board of Revenue to decide the appeal afresh after considering case of Brijlal and Phoosaram as major sons of Paburam, therefore, it was not open for the Board of Revenue to give a finding to the effect that above named two persons (petitioners) were major on the date appointed.

I have heard counsel for the parties.

From perusal of judgment passed by this Court dated 8.1.1997 it is apparent that a a direction was

given to the Board of Revenue to pass appropriate order in accordance with law while deciding the appeal afresh after considering the case of Brijlal and Phoosaram as major sons. In view of it, it was not at all open for the Board of Revenue to give a finding to the effect that Brijlal and Phoosaram were not major on the date appointed. In view of it the finding given by the Board of Revenue to the effect mentioned above deserves to be quashed.

The writ petition, therefore, is allowed in part. The finding given by the Board of Revenue by judgment dated 17.3.1999 to the effect that Brijlal and Phoosaram were not major on the date appointed is declared illegal and, therefore, the judgment dated 17.3.1999 is quashed to that extent. I do not find any error in the finding given by the Board of Revenue to the effect that no evidence was produced by the appellants to prove prima facie the land ancestral. In view of it while maintaining this finding the Board of Revenue is directed to decide the appeal bearing No.710/Appeal-Ceiling/84/Nagaur afresh within a period of six months from today.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.